(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

SECOND APPEAL NO. 12 OF 2004

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri S. D. Lotlikar, Senior Advocate with Ms. Shambhavi Dessai, advocate for the appellant.

Shri R. G. Ramani, advocate for the respondents.

CORAM : D. G. KARNIK, J.

DATE : 15th March, 2004

P.C.:

Heard learned counsel for the parties. Learned counsel for the appellant/plaintiff submits that the plaintiff had claimed that she was the owner of the suit property and had claimed injunction on the basis of ownership. As the plaintiff was held not to be in possession of the property, she was obviously not entitled to the relief of injunction. Hence, the suit must fail on technical grounds. The plaintiff therefore, seeks leave to withdraw the suit with liberty to file a fresh suit. It appears that

the suit is likely to fail only on technical grounds and hence the leave to withdraw the suit with liberty as above, can be granted. Hence, the plaintiff is granted liberty to withdraw the suit with liberty to file a fresh suit on the same cause of action. The appellant/plaintiff however, shall pay costs of this appeal to the respondents. All the defences would be available in a fresh suit, if filed.

The Second Appeal is disposed of.

D. G. KARNIK, J.

mc.